

PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM EMPLOYEES AND APPLICANTS WITH DISABILITIES

1. REASON FOR ISSUE: This Handbook updates the Department of Veterans Affairs (Department or VA) procedures on providing reasonable accommodations to employees or applicants with disabilities, in compliance with all applicable laws and regulations.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This Handbook includes multiple revisions based on the expanded legal requirements of the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 and guidance from the U.S. Equal Employment Opportunity Commission (29 CFR 1630, March 25, 2011, pages 16978-17017). The changes will be incorporated into the electronic version of VA Handbook 5975.1 that is maintained on the Office of Diversity and Inclusion's (ODI) web site at <http://www.diversity.va.gov/programs/pwd.aspx>. The revisions include, but are not limited to:

a. Adding and/or revising several definitions for terms such as: "an individual with a disability," "mitigating measures," "qualified," and "major life activities."

b. Updating procedures related to processing and tracking reasonable accommodation requests.

c. Expansion of disabilities covered by these procedures, and changing/removing the emphasis on the question of coverage.

d. Clarifying the official source of guidance for Reasonable Accommodations.

3. RESPONSIBLE OFFICE: Office of Diversity and Inclusion (06), Office of Human Resources and Administration.

4. RELATED DIRECTIVE: VA Directive 5975, Diversity and Inclusion

5. RESCISSIONS: VA Handbook 5975.1, Processing Requests for Reasonable Accommodation by Employees and Applicants with Disabilities, September 17, 2010.

CERTIFIED BY:

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**BY DIRECTION OF THE SECRETARY
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PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM EMPLOYEES AND APPLICANTS WITH DISABILITIES

1. PURPOSE. To revise the Department of Veterans Affairs' (Department or VA) policy on providing reasonable accommodations to employees and applicants with disabilities in compliance with the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. Although federal agencies are covered by the Rehabilitation Act of 1973, the Act was amended in 1992 to incorporate Title 1 of the ADA. The policy designates responsibilities, prescribes procedures for submitting and responding to requests for reasonable accommodations, and clarifies the reassignment process.

2. DEFINITIONS.

a. Designated Management Official (DMO): The DMO is the person who has authority to decide whether the organization will provide accommodation; and if so, the nature of the accommodation. The DMO who makes the decision concerning a request for reasonable accommodation shall also be referred to as the "decision-maker." The employee's first or second line supervisor or other designated official may serve in this capacity. For applicants, the DMO is usually the Human Resources Director.

b. Direct Threat: A significant risk (high probability) of substantial harm to the health or safety of the employee or to others that cannot be eliminated or reduced by a reasonable accommodation. The DMO and Local Reasonable Accommodation Coordinator (LRAC) must engage in an individualized assessment that is based on the medical documentation and the best available objective evidence. Thus, this decision cannot be based on assumptions, unwarranted fears, generalizations, stereotypes, or myths about a particular disability.

c. Effective: The accommodation provided does not need to be the one that was requested, but if an alternative is suggested by VA, the alternative accommodation must be effective in meeting the needs of the individual by addressing the barrier created by the functional limitations. An example of an effective accommodation for a deaf individual who does not use sign language would be real-time captioning that accurately records what is said. An ineffective accommodation would be captioning that was garbled or having a co-worker share meeting notes at the end of a meeting. If a deaf employee who relies on sign language requests an interpreter, providing an employee who knows some signs, or asking the employee to read lips is not effective. If a reader is hired as an accommodation for an employee who is blind, the employee must be able to understand the speech of the reader. Similarly, giving the course materials to an employee in lieu of her taking supervisory skills training, because the building is not physically accessible, is not effective.

When there are two or more accommodations that would be equally effective, the DMO may choose the one that is easier or less expensive to provide. If more than one accommodation is effective, the preference of the employee should be given consideration. However, the DMO has the ultimate discretion to choose between effective accommodations.

d. Essential Functions: The essential functions of a job are the occupational duties that are fundamental to the position to the extent that the individual cannot do the job without being able to perform them. A function can be “essential” if, among other things, the position exists specifically to perform that function, a limited number of other employees can perform the function if given the assignment, or the function is specialized and the incumbent is hired based on his or her ability to perform it. If a function is listed in the position description as an essential function, but is not performed by the incumbent or takes only a few hours per week, it is not usually considered “essential” for purposes of accommodation. The following factors are considered in determining whether a job function is essential:

- Whether the reason the position exists is to perform that function;
- The number of other employees available to perform the function or among whom the performance of the function can be distributed;
- The degree of expertise or skill required to perform the function;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time actually spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of any collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

An example of an essential function for a social worker would be the ability to understand what the Veteran is saying. Speaking and hearing would not be essential functions, as the social worker could use an interpreter or other methods for communication. An essential function for a management analyst would be the ability to obtain information, synthesize it, and prepare reports.

e. Extenuating Circumstances: Factors beyond the Department’s control which make it impossible for a reasonable accommodation to be provided within the time frame are considered to be extenuating circumstances. Examples of extenuating circumstances include, but are not limited to, delays encountered when ordering equipment that must be back-ordered, the vendor normally used has gone out of business, or there are unexpected delays by the vendor or CAP. Therefore, the office/facility is encouraged to use charge cards when possible to avoid contracts, ratification, etc. Review of medical documentation, the absence of the DMO or LRAC, and other situations within VA’s control are not considered to be extenuating circumstances and should not delay the processing of a request.

f. Individual with a Disability: An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. This shall be viewed in the broad sense and not analyzed extensively. The ADAAA reduced the emphasis on whether an individual has a disability, specifying that the determination should not demand extensive analysis. For example, a person who has asthma can have trouble breathing, and is covered under the Rehabilitation Act as an individual with a disability. The individual, with reasonable accommodation when requested, can perform the essential functions of the position without being a direct threat to the health or safety of the individual or others. As to duration of the disability or functional limitation, if a disability has effects that are not both transitory and minor, it is covered by applicable law. (Note: A healthy pregnancy is not considered a disability and is not eligible for accommodation under the Rehabilitation Act, but if there are complications, such as gestational diabetes, that would be covered.) Pregnancy can be a temporary disability. See <http://www.eeoc.gov/eeoc/publications/fs-preg.cfm>.

g. Light Duty: Generally, "light duty" refers to temporary or permanent work that is physically or mentally less demanding than normal job duties. When an employee has been injured on the job but wishes to return to work, light duty can be offered. There is no obligation to create a light duty position for an employee with a disability or injury that was not acquired on the job.

h. Major Life Activities: Under the ADAAA, the definition of major life activities is very broad. Walking, seeing, hearing, talking, lifting, and breathing are major life activities. Under the ADAAA, major bodily functions are also considered to be major life activities. Thus, major life activities include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Consequently, under the ADAAA, cancer is a disability even if it is asymptomatic (neither causing nor exhibiting symptoms of disease), since it affects normal cell growth. A longer list of major life activities is in Appendix A, but it is to be considered as non-exhaustive. Most disabilities affect one or more major life activities. Facility LRACs will check with Office of General Counsel (OGC), Regional Counsel (RC), or National Regional Accommodations Coordinator (NRAC) when in doubt.

i. Mitigating Measures: Medications and assistive devices that an individual uses to eliminate or reduce the effects of functional impairment caused by a disability. The only mitigating measures that may be considered in determining disability are ordinary eyeglasses or contacts intended to fully correct the vision of an employee or applicant for employment. Other mitigating measures may not be considered in the determination of an individual's disability status. For example, if an individual has a prosthetic leg, the person is still considered to have a disability covered by the Rehabilitation Act. In addition, non-ameliorative effects of mitigating measures, such as a reaction to medication, can be considered when determining disability status.

j. Physical or Mental Impairment: A condition or disorder, including serious side effects of a prescribed medication, which limits the individual in performing a major life activity. A non-exhaustive list includes any physiological disorder or condition, cosmetic disfigurement, or

anatomical loss affecting one or more major life activities. This includes any mental or psychological disorder such as post-traumatic stress disorder, traumatic brain injury, severe intellectual disability, organic brain syndrome, emotional or mental illness, and learning disabilities. Impairments include conditions that are episodic in nature or in remission, such as cancer or epilepsy. An impairment of a single organ is now covered under the ADAAA.

k. Qualified Individual: The term “qualified,” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions.

I. Reasonable Accommodation: A “reasonable accommodation” is a change in the work environment or in work processes that enables an individual with a disability to enjoy equal employment opportunities.

Types of reasonable accommodations include, but are not limited to: modification or adjustment to a job application process to permit an individual with a disability to be considered for a job, modification or adjustment necessary to enable an individual with a disability to perform the essential functions of the job, and modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

Examples of reasonable accommodations include, but are not limited to, the following:

- (1) Making facilities readily accessible to, and usable by, individuals with disabilities;
- (2) Restructuring of marginal job functions;
- (3) Allowing a modified work schedule, telework on a regular or intermittent basis, and/or alternate work locations;
- (4) Obtaining or modifying equipment or devices;
- (5) Appropriately adjusting or modifying examinations and training materials to make them accessible (but retaining the substance);
- (6) Providing readers, interpreters, and other auxiliary aids and assistive technologies; and
- (7) Non-competitive reassignment to another position for which the individual is qualified, as a last resort accommodation.

m. Record of Impairment: A “record of impairment” is a history of or having been classified (or misclassified) as having a mental or physical impairment that substantially limits

one or more major life activities. On request, VA is required to consider an accommodation request from an employee with a record of impairment.

n. Regarded as Having an Impairment or Disability: An individual is “regarded as having a disability” if the individual has been subjected to an action prohibited by the ADAAA because of an actual or perceived impairment/disability that is not both transitory and minor. VA is under no obligation to provide reasonable accommodation to an individual who meets only the definition of “regarded as having a disability,” but must be careful to not discriminate against these individuals by treating them disparately because of a perceived disability.

o. Substantially Limits: In the regulations implementing the ADAAA, the EEOC stated: “In keeping with the instruction that the term ‘substantially limits’ is not meant to be a demanding standard, the regulations provide that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. However, to be substantially limited in performing a major life activity an individual need not have an impairment that prevents or significantly or severely restricts the individual from performing a major life activity.” We are required to construe the term ‘substantially limits’ broadly in favor of expansive coverage.

p. Transitory and Minor: If an impairment is both transitory (temporary) and minor (does not affect any major life activities), VA is not required to provide an accommodation. The DMO or LRAC must provide evidence that the impairment is actually transitory and minor. If the disability substantially limits one or more major life activities, there is no minimum duration that the disability must last; the previous six-month minimum has been struck-down by Congress through the ADAAA.

q. Undue Hardship: An “undue hardship” is the significant difficulty or expense incurred or anticipated should the organization provide a particular accommodation. The following criteria are used to determine undue hardship:

(1) Nature and cost of the accommodation. (Note: Only the Secretary, VA, can deny a request based on cost. In determining whether an accommodation is too costly, the financial resources of the organization or the Department as a whole should be considered, not just those resources of the individual facility or staff office.)

(2) Overall size of the organizational unit with respect to the number of employees, facilities, and size of the budget.

(3) Type of operation, including composition and structure of the workforce.

(4) The impact of the accommodation on the operation of the organization, including the impact on the ability of other employees to perform their duties and the impact on the organization's ability to conduct business.

The Office of General Counsel (OGC), Regional Counsel (RC), or National Reasonable Accommodations Coordinator (NRAC) in the Office of Diversity and Inclusion (ODI must be consulted before a denial is communicated to the employee.

3. POLICY.

a. VA shall provide reasonable accommodations to individuals with disabilities to allow them to fully participate in the application process, perform essential job functions, and enjoy equal benefits and privileges of employment, in accordance with all applicable laws, regulations, and VA policies, unless to do so would cause a direct threat to health and safety or undue hardship to the operation of the unit. Note that whether cost is an undue hardship is determined by the Department's budget and thus, a denial based on cost must be decided by the Secretary of VA.

b. The responsibility for funding the cost of reasonable accommodations resides with the Department. However, for most requests, the Facility, Administration or Staff Office where the requestor is employed or in the case of recruitment, the organization where the applicant seeks to be employed should make the purchase. VA facilities and offices can obtain at no cost accommodations that are electronic equipment or information technology from the U.S. Department of Defense's Computer/Electronic Accommodations Program (CAP). In many cases, reimbursement for the cost of reasonable accommodations not provided by CAP may be obtained at the Department level, through the VA Centralized Reasonable Accommodation Fund in the ODI. Thus, the facility or office that follows the guidance and expended the funds will be reimbursed in a few weeks.

c. This policy applies to accommodation requests from all VA employees and applicants with disabilities. Reasonable accommodation requests will be processed in accordance with the procedures contained in this Handbook. Offices and Facilities are not permitted to write their own Handbook, procedures, or policy. They may prepare a cover sheet listing the office/facility-level contacts responsible for various aspects of processing requests for accommodation, and logistical details on how the office/facility will comply with these procedures. Training shall only be conducted by the Office of Diversity or Inclusion (ODI) or OGC, or by an approved designee.

d. It should be noted that if an employee is no longer qualified or able to perform the essential functions of the job, VA is not ordinarily absolved of the duty to provide reasonable accommodation.

4. RESPONSIBILITIES.

a. Secretary of Veterans Affairs. The Secretary or Deputy Secretary will ensure that an effective process for responding to all requests for reasonable accommodations is established.

b. Assistant Secretary for Human Resources and Administration. The Assistant Secretary for Human Resources and Administration (ASHRA), through the Deputy Assistant Secretary (DAS) for Diversity and Inclusion, will:

(1) Maintain oversight for the Department-wide accommodation policy and process, especially denials.

(2) Monitor the timeliness of accommodation request processing, via the Reasonable Accommodation Compliance System.

c. Assistant Secretary for Information and Technology. The Assistant Secretary for Information and Technology will:

(1) Designate an Electronic and Information Technology (EIT) Accessibility Officer (508 Officer) to ensure that all EIT hardware and software are fully accessible to employees with disabilities in the VA workplace, in compliance with Section 508 of the Rehabilitation Act of 1973, as amended.

(2) Ensure that reasonable accommodations related to EIT are provided and installed expeditiously and properly. Ensure that OIT practices, policies, and procedures facilitate the prompt purchase and installation of EIT accommodations.

(3) Work collaboratively with the ASHRA, the Deputy Assistant Secretary for Diversity and Inclusion, the National Reasonable Accommodation Coordinator (NRAC), and 508 Officer to provide legally compliant, timely, and effective reasonable accommodations and EIT accessibility services.

(4) Ensure that IT procurement procedures do not hinder the purchase of items needed as a reasonable accommodation.

(5) Assign staff to assist the NRAC and LRAC/ALRAC when IT issues arise regarding an accommodation request and the issues are not addressed by the employee's office.

(6) Instruct IT staff to assist in sending software and hardware to an employee's new location if an employee transfers.

d. General Counsel or Regional Counsels will:

(1) Serve as a legal expert on reasonable accommodation matters.

(2) Serve as a consultant with regard to prospective denial of reasonable accommodation requests.

(3) Conduct training.

e. The Counselor to the Inspector General will:

(1) Serve as a legal expert on reasonable accommodation matters within the Office of the Inspector General (OIG).

(2) Serve as a consultant with regard to prospective denial of reasonable accommodation requests in the OIG.

f. Under Secretaries, Assistant Secretaries, Deputy Assistant Secretaries, Facility Directors, and Other Key Officials, within their respective organizations will:

(1) Ensure that the organization or facility has a Local Reasonable Accommodation Coordinator (LRAC) and an alternate (ALRAC). If a new LRAC or ALRAC is appointed, provide to the VA Disability Program Manager the contact information for that individual. Ensure that the LRAC and ALRAC schedule their travel, training or leave so that they are not both out of the office at the same time.

(2) Publicize to all employees via email announcements and posters in public areas the name of the LRAC and ALRAC. Ensure that employees and supervisors know to contact the LRAC with disability accommodation questions.

(3) Provide sufficient resources to ensure effective implementation and management of the process for responding to requests for reasonable accommodation.

(4) Ensure training for all managers, supervisors, team leaders, and designated LRACs and ALRACs regarding their roles in processing requests for reasonable accommodations, including how to submit requests for assistive technology to CAP.

(5) Ensure that the facility is using the VA Handbook and forms. If the facility creates their own approval/denial letters, they must comply with the VA Handbook and include the appeal options listed in VA Form 0857f, Accommodation Request Determination.

(6) Require that the organization or facility have a system for sending any software or hardware, provided as reasonable accommodation, with the employee when an employee transfers to another VA facility. (The employee should notify the LRAC of his or her departure two weeks in advance or as soon as the transfer is confirmed, to ensure arrangements are made).

(7) Periodically evaluate the effectiveness of the process for responding to requests for reasonable accommodations, to ensure that responses are appropriate and timely.

(8) Ensure records of requests for reasonable accommodation are maintained in accordance with procedures outlined in this Handbook.

(9) Ensure that accommodation requests are approved or denied at the lowest possible level, usually at the level of the employee's immediate supervisor.

(10) Refrain from being the Designated Management Official (DMO), except for employees who report directly to him or her, so that he or she can be part of the appeal process when an employee requests reconsideration.

(11) Ensure that each facility designates someone to review requests for reconsideration of the decision made concerning an accommodation request. If the designated individual is also the DMO for the employee requesting appeal, the reconsideration request should be given to a higher level official.

(12) Ensure that all contracts for the use of external facilities and services reflect the obligation that such facilities and services must be fully accessible to individuals with disabilities.

g. The Deputy Assistant Secretary for Diversity and Inclusion will:

(1) Develop a Department-wide reasonable accommodation policy and provide guidance to managers, supervisors, and employees and applicants with disabilities.

(2) Designate the Disability Employment Program Manager and the National Reasonable Accommodation Coordinator.

(3) Maintain the Department-wide Reasonable Accommodation Compliance System (RACS) to monitor the process for responding to requests for accommodation at the Department, Administration, Regional and Facility Levels.

(4) One year from publication of this Directive, will analyze and evaluate the effectiveness of the process for responding to requests for accommodations and will provide recommendations for improvement.

(5) Maintain a current roster of LRACs and Alternate LRACs (ALRACs), and ensure public access to that list.

h. The National Reasonable Accommodation Coordinator in ODI will:

(1) Serve as the Department's subject matter expert on reasonable accommodation procedures and provide guidance and training as required.

(2) Receive and compile summary data from the Administrations and Staff Offices for annual reporting purposes.

(3) Serve as a consultant with regard to prospective denial of reasonable accommodation requests.

(4) Serve as the Department's liaison to the Computer Assistance Program (CAP) at the U.S. Department of Defense.

(5) Administer the VA Centralized Reasonable Accommodation Fund.

i. The Human Resources Management Officer (HRMO) will:

- (1) Work with the LRAC, the DMO and requestors to ensure that accommodations are provided in a timely manner.
- (2) Consult with DMOs, as needed, to review the essential functions of positions and assist with identifying possible accommodations.
- (3) When appropriate, in the case of employees, work with DMOs, LRACs, and employees to identify positions for potential reassignment.
- (4) In the case of applicants, serve as the DMO for requests for accommodation from applicants for employment during the application and interview phase.
- (5) If an employment physical is required and the candidate does not pass the physical because of a disability, the HRMO will ensure that the candidate is aware of the reasonable accommodation process. If the candidate requests an accommodation that appears to effectively address the functional limitations posed by the disability, the HRMO will ensure that the offer is not rescinded because of the results from the physical. The normal accommodation procedures will then be followed.

j. DMOs, Supervisors, and Group or Team Leaders (within their respective organizations) will:

- (1) Be knowledgeable about the policy and procedures for processing requests for reasonable accommodation.
- (2) Explain to the requestor VA's process for handling accommodation requests and who will issue the decision.
- (3) Be aware that as Federal law, the Rehabilitation Act is superior to any office, facility, Administration, or VA policy on telework, hours of duty, parking, etc. Understand the need to be flexible when considering accommodation requests.
- (4) Make the decision regarding a request for reasonable accommodation in consultation, if necessary, with the LRAC and legal counsel, in accordance with the guidance provided in this directive and all applicable laws and regulations. Consult with OGC, RC or the NRAC before issuing a denial.
- (5) Maintain confidentiality of requests for reasonable accommodation and maintain records consistent with the guidance in this Handbook.
- (6) Refrain from reviewing the medical documentation or, if the employee is a Veteran, accessing the Veteran's patient/client files. The LRAC will review the medical documentation and advise the DMO whether the employee has a disability that is covered

by the Rehabilitation Act and, if so, the functional limitations caused by the disability.

(7) When serving as the DMO, ensure that requests for reasonable accommodation and the process for deciding on those requests are properly documented and provided to the LRAC.

(8) When an employee's request for software or equipment should be granted, inform the LRAC, so that the LRAC can request the items from CAP.

(9) When appropriate, search for and propose an alternative effective accommodation that meets the needs of the employee after discussion with the OGC, RC, or NRAC.

(10) Ensure that accommodation decisions are made as expeditiously as feasible, and that accommodations granted are provided timely, usually within thirty (30) or fewer calendar days from the date of the request. As stated in 2 e above, this timeframe may be extended due to extenuating circumstances.

(11) Designate an alternate to process requests in the absence of the DMO.

(12) Alert the LRAC when an employee with an accommodation is transferring to a new VA location so that the accommodation can be transferred with the employee when such transfer is feasible.

k. Local Reasonable Accommodation Coordinators (LRACs) will:

(1) Avoid allowing their primary role at VA to unduly influence their role and decisions as a LRAC.

(2) Explain to employees that Form VA 0857a, Written Confirmation of Request for Accommodation, which is used to confirm the request is optional, but encouraged.

(3) Explain to employees that the requested accommodation must be directly related to the functional limitations caused by the disability.

(4) Assist supervisors and management officials at all levels with processing requests for reasonable accommodation; interpreting regulations and statutes; reviewing existing policies and procedures; and recommending appropriate changes in policy and procedures when necessary to be consistent with this guidance.

(5) Ensure that VA does not request documentation if the disability is obvious or documentation for the same functional limitations has already been provided in support of a request for reasonable accommodation. When the disability is not obvious or documented, the LRAC may request medical documentation but must use VA Form 0857e.

(6) Check with the OGC, RC, or NRAC for agreement before requesting more documentation than is provided on the completed VA 0867e.

- (7) Determine whether the employee or applicant is an “individual with a disability,” as defined by Section 4 (f) in this Handbook. Inform the DMO whether the individual has a disability covered by the Rehabilitation Act and the functional limitations caused by the disability.
- (8) Refrain from sharing the specific disability or medical documentation with the DMO or other supervisory officials.
- (9) Ensure that all requests outside the authority of the normal DMO, such as parking, facility renovations, information technology, etc. go to the appropriate individual and are processed timely.
- (10) Submit to CAP all requests for assistive technology and software.
- (11) Consult with EEO offices, ODI, OIT, CAP, the Job Accommodation Network <www.askjan.org> or other resources to identify reasonable accommodation options, if needed.
- (12) Maintain the confidentiality of reasonable accommodation requests and related documentation (e.g., keeping medical records separate from personnel records) and maintain records at their facility in a locked file cabinet.
- (13) Provide accommodation information to employees and applicants for employment and answer questions about the reasonable accommodation process.
- (14) Track and report all requests for reasonable accommodation and the disposition of those requests by using the RACS.
- (15) Assist with securing funding for reasonable accommodations not provided by CAP, including those that may be reimbursed through the Centralized Reasonable Accommodation Fund.
- (16) Attend reasonable accommodation training.
- (17) Ensure that Facility or Staff Office managers and supervisors receive training on their role and responsibilities for providing reasonable accommodation.
- (18) Serve as LRAC for another component’s virtual employee who is physically located at their facility. (In these situations the employee’s supervisor remains responsible for any purchase necessary to provide accommodation. Facility modifications will normally come from the Facility’s budget.)
- (19) Assist an employee who transfers within VA by sending any equipment to the new location when possible. Work with IT to ensure that any software or hardware is sent to the

new VA location when an employee transfers. Send the accommodation file to the LRAC at the employee's new VA location.

(20) Alert other LRACS of the availability of equipment after an employee separates from VA, and arrange to send the equipment to an LRAC who has identified a VA employee who needs the equipment.

I. Managers and supervisors who are not the DMO or LRAC but receive a request will:

(1) Forward the request to the LRAC, ALRAC, and the DMO as soon as possible, but in no more than five (5) calendar days.

(2) Inform the requestor of the name and contact information of the facility's LRAC and ALRAC.

m. Employees with Disabilities who Request Accommodation will:

(1) Inform their supervisor, any manager in their chain of command, or the LRAC of their need for an accommodation. Requests may be verbal, written, or entered directly into the automated system, known as the Reasonable Accommodations Compliance System (RACS). The URL is: <https://va-ra.entellitrak.com/>

(2) Engage in the interactive process by working collaboratively with their supervisors or DMO, HRMO representatives, VA's Section 508 Accessibility Testing and Training Center, and CAP, to identify accommodations that will enable them to perform the essential functions of their job, participate in VA activities, and/or enjoy the benefits and privileges of VA employment.

(3) Refrain from submitting requests to CAP. The LRAC and ALRAC are the only individuals authorized to submit requests to CAP.

(4) Provide to the LRAC the Form VA 0857e completed by the employee's health care provider if the disability is not visible, sufficient documentation is not on file, and the LRAC requests documentation of the disability. Note that the time frame for processing the request stops when medical documentation is requested and resumes when the medical documentation is provided.

(5) Inform the LRAC if transferring to a different VA facility so that, when feasible, any equipment can be sent to the new facility. This should be done as soon as the transfer is confirmed, usually at least two weeks before the transfer.

(6) Cooperate with the LRAC, the agency, or CAP by participating in the interactive process and/or providing medical documentation upon request. Ensure that the health care provider completes the requested VA Form 0857e. Failure to cooperate can result in denial of the request for accommodation.

(7) Employees are encouraged to complete VA Form 0857h, Employee Limitations on Reassignment Options, if reassignment is being considered.

n. Applicants with Disabilities who Request Accommodation will:

(1) Make a request for an accommodation to the HRMO staff, the HR Liaison arranging the interview, or the hiring official. Requests may be verbal, written, or entered directly into the automated system, RACS.

(2) Engage in the interactive process by working collaboratively with HRMO representatives, LRAC, or ALRAC to identify accommodations that will help them apply or interview for the job.

Note: Because time is limited during the application process (pre-job offer), applicants will not be asked to provide documentation of a disability.

5. ENSURING REEMPLOYMENT OF EMPLOYEES INJURED ON THE JOB

When an employee has incurred a serious workplace injury or illness, but is ready to return to work if an accommodation is provided, VA will work with the employee to identify and provide an appropriate accommodation. It is VA's goal to identify injured employees, as defined under the Federal Employees' Compensation Act (FECA), who would benefit from accommodations and reassignment so that we can increase return-to-work outcomes. Accommodations are provided to employees with temporary injuries or disabilities regardless of whether an Office of Worker's Compensation Programs claim is approved. Once the employee's physician clears the employee to return to work, it is VA policy that we will provide accommodation when appropriate.

If an on the job injury results in a temporary condition or limitation, light or limited duty, a detail, or a voluntary leave of absence may be offered. If the limitation is permanent, the duties may need to be restructured, non-essential duties be eliminated, or a reasonable accommodation provided. In some situations, the employee may need to be reassigned to a different position.

6. TIME FRAMES

All requests for accommodation should be processed as expeditiously as feasible. Requests from applicants should be expedited and processed within ten (10) calendar days. Requests from employees should ordinarily be processed within thirty (30) calendar days, not counting the time waiting for medical documentation.

The U.S. Equal Employment Opportunity Commission has ruled that when a disability is known and the accommodation can be easily provided, failure to process the accommodation request quickly could constitute undue delay in violation of the Rehabilitation Act. Thus, VA offices and facilities are expected to provide the accommodation in a shorter time frame, when possible. A few examples of accommodations that can and should be provided quickly are:

- A small mirror for an employee with post-traumatic stress disorder to mount on his wall so that he can see people approaching his work area.
- Sign language interpreters or captioning for an employee who is deaf.
- Telework for an office employee who has multiple sclerosis and is fatigued by the commute.
- A fan or heater for an employee who has a disability that causes them to feel too hot or too cold.
- Allowing an administrative employee with cognitive issues to use his or her own tape recorder as a memory device.
- Changing the time of a mandatory meeting to allow an employee to attend physical therapy sessions.
- An accessible parking space for an employee with a mobility impairment at a facility that has free parking spaces.

a. The time frame begins as soon as the applicant or employee requests a change because of a disability. Do not wait for a written request.

b. Extenuating circumstances, described in section 2 (e) above, do not include the absence of the DMO or other responsible official or the time taken by the LRAC to review medical documentation. Per the ADAAA guidance, the review of medical documentation should not require extensive deliberation.

c. The time from when medical documentation is requested to when it is provided is not included in the timeframe for processing requests for accommodation. Thus, there is no reason to give the employee a short “due date” for providing medical documentation. Some employees may need at least ninety (90) calendar days, as it can be difficult to secure an appointment with a medical specialist.

d. If the accommodation cannot be provided immediately, an interim accommodation should be provided when feasible. Note that an interim accommodation is not guaranteed; it depends on the employee’s job duties and functional limitations. If an interim accommodation would not have an adverse impact on the operation of the unit and is deemed to be appropriate but it has not been determined that the employee has a disability, the employee should be informed that this is not a reasonable accommodation; it is just a courtesy.

e. If the disability is obvious and a situation arises that will prevent a timely decision and/or provision of the requested accommodation, and an interim accommodation is not feasible, please contact the LRAC at the next higher level, the Administration EEO office, or the NRAC for guidance.

For further information on time frames please see Appendix C.

7. REQUESTING REASONABLE ACCOMMODATION.

a. A request for reasonable accommodation is an oral or written request made by an applicant or employee or an applicant or employee’s representative (e.g., a family member,

health care professional, or an agent acting on behalf of the employee or prospective employee) to the employee's supervisor, any manager in the employee's chain of command, the LRAC, or entered in the automated RACS available on-line. If the request is received by a manager or supervisor who is not the DMO, he or she will forward the written request or inform the LRAC, ALRAC, and the DMO of an oral request within five (5) calendar days.

b. A requestor does not have to use words such as "reasonable accommodation," "disability," or "Rehabilitation Act" in the request. Additionally, an employee may request a reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability. The requestor should not be required to make repetitive requests for the same accommodation. In such cases, the supervisor or manager and the requestor should work together to anticipate any situations that may require recurring accommodation (e.g., sign language interpreters or large print documents).

c. Job applicants or their representatives (e.g., a family member, health care professional, or an agent acting on behalf of an employee) may submit a written or verbal request for an accommodation for any part of the application process, including the interview phase, to the HRMO listed as the point of contact in the job vacancy announcement, to the LRAC, or via the automated RACS.

d. Employees and applicants are encouraged to make their request via RACS at <https://va-ra.entellitrak.com> or document their request using VA Form 0857a, Written Confirmation of Request for Accommodation (Appendix B), and give it to their immediate supervisor or the LRAC, so that VA has a record of the request. This form is optional, but helpful.

e. A reasonable accommodation request shall not be the basis for a lower performance appraisal or other adverse action. Facilities are advised to refrain from ordering a fitness for duty examination upon receiving an accommodation request, unless the employee exhibits behavior that appears clearly dangerous to the employee or others.

8. DOCUMENTING THE REQUEST.

a. The DMO who receives the request for accommodation should acknowledge receipt in writing by completing and giving VA Form 0857b, Acknowledgement of Receipt of Request (Appendix B), to the requestor and forward a copy of the acknowledgement to the LRAC. This acknowledgement is required even if the employee did not document the request in an email, via VA Form 0857a or via RACS.

b. For job applicants, HRMO will complete VA Form 0857a, Written Confirmation of Request for Accommodation, and forward the form to the LRAC. Diligent effort should be made to process requests from applicants as soon as feasible, in order for them to be able to participate in the application process. A decision on the accommodation should be made within ten (10) calendar days of receiving the request.

c. All requests for and provisions of reasonable accommodation must be confidential and documented via RACS.

9. INTERACTIVE PROCESS.

a. When the individual makes an oral or written request for reasonable accommodation, managers should ordinarily begin to engage in the interactive process with the individual after receiving notice of the request. The interactive process is the communication between the DMO and the employee, in consultation with the LRAC, to determine how best to respond to the employee's request. During this process, an individualized assessment will be conducted to review essential and marginal job functions, the employee's limitations, and possible accommodations. The interactive process may require more than one discussion. The DMO or LRAC will also explain the reasonable accommodation process to the employee at this time.

b. Ongoing communication and cooperation are important, especially when a specific limitation, problem, or barrier is unclear or when the disability or an effective accommodation is not obvious. Thus, interactive discussions should be documented, with at least the date, time, participants, and key points noted.

c. In the case of an applicant for employment, the local HRMO (or his or her designee) will engage in the interactive process with the applicant.

d. Once a job offer has been made, if an accommodation is requested, the interactive process with the new employee with a known disability (post offer but pre-on boarding) should be conducted by the supervisor and the LRAC, in consultation with the GC, RC or NRAC, if necessary, to discuss and identify possible accommodations, and ensure that the requested accommodation is in place when the new employee starts.

e. Failing to engage in the interactive process is a violation of the Rehabilitation Act of 1973, as amended, and may create liability for VA.

10. INTERIM WORKPLACE ADJUSTMENTS.

Where feasible, interim workplace adjustments or accommodations will be provided for an employee with an obvious or documented disability until a final decision has been made on the request for accommodation (and, if approved, implemented). The interim workplace adjustment should enable the individual to perform the essential functions of the job or enjoy the benefits and privileges of employment without posing a direct threat to anyone's health and safety. Interim workplace adjustments are not required or guaranteed, but are highly recommended when they can be offered without adverse impact on the operation of the unit.

The office or facility should strive to provide an interim accommodation if there will be a delay in acquiring the approved accommodation. This is sometimes the case when the accommodation is ordered from the Department of Defense's CAP. VA Form 0857c, Approval of Interim Accommodation, can be used to document the agreement to make a workplace adjustment until the requested accommodation can be arranged.

11. DETERMINING WHETHER A REQUESTOR IS COVERED BY THE REHABILITATION ACT OF 1973, AS AMENDED.

The determination of disability has been simplified by the ADAAA. To process the reasonable accommodation request, the LRAC will follow all relevant steps.

a. ***Does the individual have a covered disability?*** VA must determine if an employee has a disability covered by the Rehabilitation Act, which may entitle him or her to a reasonable accommodation. Under the ADAAA, this determination shall not demand extensive analysis. Note that the LRAC, and not the DMO, makes this determination. As part of the analysis, the LRAC, will consider the following:

- (1) The nature and severity of the individual's impairment. The minimum six month duration requirement is no longer in effect. Only an impairment that is **both** minor and transitory, as defined in section 2 (p) of this Handbook, will not be covered for accommodation purposes.
- (2) The major life activity or activities that the impairment limits.
- (3) The extent to which the impairment limits the individual's ability to perform the activity or activities.
- (4) The individual's record of impairment, if any.
- (5) Medical documentation may be required to make this determination. For those situations, please see section 12 (WHEN MEDICAL INFORMATION IS NEEDED FOR DISABILITY DETERMINATION).

b. If the medical documentation (VA Form 0857e) clearly states that the individual has a medical condition, the LRAC should determine whether the medical condition is a disability, within the meaning of the Rehabilitation Act. If so, the LRAC should then let the DMO know that the employee has a covered disability without naming the disability, and explain the functional limitations caused by the disability. If there is a question, the LRAC can contact the LRAC at the next higher level, the RC, or the NRAC.

c. If the individual does not have a visible disability and refuses to provide medical documentation, the LRAC will tell the DMO that the employee has not provided documentation to show that he or she has a disability that is covered by the Rehabilitation Act.

d. If the medical documentation does not support the functional limitations claimed by the employee, or if there is a question about the medical documentation, the LRAC may consult with Occupational Health after redacting the employee's name, the DMO's name, and other identifying information.

e. DMOs, even those who are medical professionals, shall accept the disability determination made by the LRAC, based on the information from the employee's health care provider.

f. If it is determined that the individual is not covered by the Rehabilitation Act, the request for accommodation may be denied after consultation with the OGC, RC or the NRAC.

g. Caution should be taken when making this decision because one purpose of the ADAAA is to make it easier for an individual to establish that he or she has a disability covered by the ADA and the Rehabilitation Act. For more information on denials, please see section 21, "DENIAL."

12. WHEN MEDICAL INFORMATION IS NEEDED FOR DISABILITY DETERMINATION.

Medical documentation should not be requested to support every accommodation request. Medical documentation goes only to the LRAC and is not shared with the DMO or the Reasonable Accommodation Committee (RAC), which is present in some VHA facilities.

a. When a disability or need for reasonable accommodation is not obvious or otherwise not already known to the VA, the LRAC may request that the employee submit appropriate medical documentation about the disability and his or her functional limitations through VA Form 0857e. The LRAC will give the VA Form 0857e to the employee to have his or her medical provider complete it. There is no specific time restriction on the employee to produce this information, but ninety (90) calendar days is generally sufficient. The longer time frame is needed because it can be difficult to get an appointment with certain medical specialists. The time between requesting this information from the employee and receipt of the information is not counted as part of the time limit to make a decision concerning the request for accommodation. Information on the disability and functional limitations may be obtained by the employee or from an appropriate health care professional, such as a physician, social worker, or rehabilitation counselor. However, it is important that the medical documentation come from an appropriate professional. EEOC has held, for example, that a chiropractor is not competent to diagnose fibromyalgia.

b. Requests for medical documentation are limited to the questions on VA Form 0857e.

c. If the information provided by the requestor's health care professional is insufficient to enable an informed determination, additional information may be requested, but only after obtaining agreement from the LRAC at the next higher organizational level (e.g. VISN level). In this instance, the LRAC should explain to the requestor why the submitted documentation is insufficient, identify the information that is needed, and allow the requestor an opportunity to provide the information.

d. When the employee's health care provider has completed the form but it is unclear regarding the functional limitations, the LRAC may consult with Occupational Health under the conditions described in Section 11 (d).

e. When there is a need to directly contact the health care professional to clarify an employee's functional limitations, the LRAC must first obtain agreement from the OGC, RC or NRAC. After obtaining agreement, the LRAC will give the employee VA Form 0857k, Authorization for Limited Release of Medical Information. The contact with the health care professional must be in writing via U.S. Postal Service mail; it cannot be via phone, email, or other non-official method, per the Health Insurance Portability and Accountability Act. If the requestor refuses to provide the necessary release of medical information and fails to respond to requests for information, after further consultation with OGC, the RC, or the NRAC, the request may be denied. Note that the Form 0857k is not needed when giving the completed (top half) Form 0857e to the employee.

f. In rare cases, if the employee has been cooperative but the completed Form VA 0857e and responses to subsequent inquiries are insufficient to determine whether the employee has a disability within the meaning of applicable law, the LRAC may consult with the OGC, RC, or NRAC to obtain permission to request that the employee be examined by a health care professional of VA's choice, at no cost to the employee. If the employee or applicant refuses to be evaluated, the reasonable accommodation request may be denied, but only after consultation with the OGC, RC, or the NRAC. Extreme caution should be used in determining to take this step as improper use of this procedure may violate the Rehabilitation Act and create liability for VA.

g. If a fitness-for-duty exam reveals a functional limitation that will adversely impact the employee's ability to perform the essential duties of the job, the employee should not be asked to obtain additional medical documentation. The exam results should be shared with the employee; and the accommodation process begins at that point.

h. Processing timelines freeze from the time that medical documentation is requested to when it is received. Even if medical documentation is received from an employee long after it was requested, the DMO must continue or resume processing the request.

Note: The medical documentation may identify a particular accommodation, but is not required to do so. Duration of the disability and need for accommodation also should not be held to a demanding level of specificity, given the inherent uncertainty of some disabilities and impairments.

EEOC has held that requiring additional medical documentation unnecessarily is a violation of the Rehabilitation Act, so this guidance is essential to the appropriate processing of accommodation requests. If you have any questions, please contact your EEO Manager, RC or NRAC.

13. CONFIDENTIALITY REQUIREMENTS

Under the Rehabilitation Act, the request, the disability, and any medical information obtained in the accommodation process or via other channels, must be kept confidential. Confidentiality rules regarding disability status apply to all employees and applicants, whether or not they are individuals with disabilities. Violation of the Rehabilitation Act's medical confidentiality

requirements exposes the agency to liability, even if no other action is taken against the individual whose medical information is disclosed.

a. After making a determination that an employee is covered by the Rehabilitation Act, the LRAC should inform the DMO of the relevant functional limitations caused by the disability. The LRAC may not share the name or the particulars of the disability, or any medical information.

b. Each LRAC shall maintain medical and other records pertaining to requests for reasonable accommodations in a locked dedicated file cabinet, in accordance with the Privacy Act of 1974, 29 CFR 1611, EEOC Order 150.003, and VA information security and privacy policies, including VA Handbook 6500 (Information Security Program). Other records such as personnel, timekeeping, etc. shall not be kept in this file. The LRAC should raise any information security or privacy concerns, including lost, missing or stolen personally identifiable information, with the operating unit's Information Security Officer (ISO) or Privacy Officer.

c. If the employee transfers to a different VA facility, the medical information and other documentation should be sent via United Parcel Service (UPS) to the LRAC at the new facility and kept in a locked cabinet.

d. Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose the information except as follows:

(1) Supervisors and managers (aside from the DMO) who need to know may be told only the necessary restrictions on the work or duties of the employee and the necessary accommodation(s);

(2) In the event of medical emergency, first aid and safety personnel may be informed if an employee's disability might require emergency treatment;

(3) VA and other government officials may be given information necessary to investigate VA's compliance with the Rehabilitation Act;

(4) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers, and Department EEO officials may be given the information to maintain records and evaluate and report VA's performance in processing reasonable accommodation requests;

(5) Where medical information regarding a requested reasonable accommodation is disclosed, the DMO must inform the recipient about the confidentiality requirements that attach to the information;

e. The medical information or accommodation may not be shared with the employee's co-workers or other employees. Supervisors can respond to inquiries by explaining that many workplace issues confronted by employees are personal, and that in these circumstances, it is the VA's policy to respect employee privacy.

f. LRACs, DMOs, and other officials are reminded that when an employee is also a Veteran, the records concerning the accommodation request and documentation process (if needed) must be separate from the records concerning the Veteran's medical care from VA staff. Under no circumstances should the LRAC or DMO access the Veteran's medical or benefits file. To do so may be grounds for disciplinary action, up to and including removal.

g. Discussion and email traffic concerning accommodation decisions should be limited to the LRAC, Alternate LRAC, DMO, and the employee. When there is a bona fide need to know, the RC, OGC, or NRAC will be included. Emails that include any additional employees or offices are not permitted to include the name of the employee or the disability information.

14. IDENTIFYING AND GRANTING ACCOMMODATIONS FOR APPLICANTS.

a. The HRMO and the LRAC will review the functional limitations claimed by an applicant requesting accommodation and will identify possible accommodations that will enable the individual to complete the applicant process, including the interview. Some specific examples of reasonable accommodation for applicants are:

- (1) Allowing a hard copy application instead of requiring the on-line process.
- (2) Moving the interview location to a facility that is physically accessible.
- (3) Providing an oral or sign language interpreter for a deaf applicant at the interview.
- (4) Providing application materials and responses in an accessible format, such as digital, large print, or email.
- (5) Escorting a blind applicant to and from the interview room.

The above examples are not all-inclusive. An applicant may request a different accommodation.

b. Time is of the essence for any accommodation, but is especially important when it is for an applicant.

15. IDENTIFYING AND GRANTING ACCOMMODATIONS FOR EMPLOYEES.

a. The DMO, the HRMO (as needed), and the LRAC will review the functional limitations and in discussions with the employee, identify possible reasonable accommodations that will enable the employee to perform the essential functions of the position or enjoy the benefits and privileges of employment. For additional assistance, please see section 26, ADDITIONAL RESOURCES. The requestor may propose an accommodation; however, the DMO will make the final decision on whether to grant a reasonable accommodation. Some specific examples of reasonable accommodation are (but are not limited to) the following:

- (1) Modifying a cubicle to allow room for a wheelchair or scooter.
- (2) Restructuring of marginal (non-essential) job functions which cannot be performed because of functional limitations.
- (3) Allowing a modified work schedule or telecommuting for an individual who has a disability that makes commuting difficult.
- (4) Obtaining screen-reader software for an individual who is blind.
- (5) Printing examinations and training materials in large font.
- (6) Providing interpreters or captioning services for an employee who is deaf.
- (7) Ensuring that training is offered only at fully accessible facilities.
- (8) Providing an assigned accessible parking space close to the building entrance and the employee's office is a routine accommodation that should be granted for an individual with a mobility impairment.
- (9) Allowing an employee to use a service animal in the workplace.
- (10) Reassignment to another position. This is the accommodation of last resort and will be considered only if there are no other accommodations available that will enable the employee to perform the essential functions of his or her current job. Reassignment should be initiated by the DMO, in collaboration with the HRMO. The interactive process is especially critical when reassignment is being considered.

b. When the disability is known or documented, supervisors should grant accommodation requests, if feasible. Decisions should be made at the lowest level to ensure timeliness and efficiency. Facility Directors should not serve as the DMO except for employees who report directly to them. This allows the appeal process for most employees to stay within the facility.

c. Once an accommodation request is approved for a permanent disability/functional limitation, the employee should be allowed to keep the accommodation after the DMO no longer supervises the employee. In rare instances, the accommodation may need to be changed, but the DMO and LRAC should first check with RC, OGC, or NRAC before making any changes that are not requested by the employee. The accommodation, including necessary equipment and software, also "goes with" the employee when transferring to a new VA location. If an employee's job duties change, the LRAC may check to verify that the current accommodation is still needed and effective.

16. REASSIGNMENT AS A REASONABLE ACCOMMODATION FOR EMPLOYEES.

This is the accommodation of last resort and will be considered only if there is no other accommodation available that will enable the employee to perform the essential functions of

his or her current job, and the employee has a permanent or long-term disability. (If the employee has a temporary disability, a detail may be an appropriate accommodation.) Reassignment should be initiated by the LRAC, in collaboration with the HRMO. The interactive process is especially critical when reassignment is being considered.

a. Reassignments are non-competitive and ideally are made to a position that has not been announced.

b. Before the organization conducts a search, it may require the requestor to indicate, in writing on VA Form 0857h, Employee Limitations on Reassignment Options, whether he or she is willing to accept reassignment to:

- (1) a job series that is different from the series of his or her current position and if so, which job series;
- (2) locations outside the facility or the commuting area, and if so, which locations
- (3) a lower grade position, if there are no vacant equivalent position; and/or
- (4) a part-time position;

c. Reassignment should be to a funded, vacant position, or to a funded position that will be vacant within sixty (60) calendar days from the date the organization commences a search for an appropriate position. The reassignment is non-competitive. Most reassignment processes should be completed within ninety (90) calendar days.

d. The employee's HR Office will:

(1) Obtain the employee's resume and search for suitable job openings, including positions that will be open within the next 60 days, at their facility. The essential elements of the job will be compared to the individual's resume. The physical requirements of the job as described in the job announcement or position description should not exceed the employee's physical limitations, when appropriate accommodations are considered. HR will email the Service Chiefs, Directors, or other hiring officials at the facility to request information on any vacancies expected to open in the next sixty (60) calendar days, and ask if there are any pending retirements for the job series and pay level identified by the employee. HR can also review VA vacancies on USAJOBS.

(2) Once a position is identified, HR will consult with the hiring official to confirm the skills sets, duties, etc. that are required, in order to make a qualifications determination. HR should ask whether there are any qualifications or requirements that were not mentioned in the announcement. At this point, HR should not mention the reassignment attempt.

(3) Once HR has ascertained all of the requirements for the position, it will compare them to the employee's skills, experience and knowledge. If the employee qualifies for the position

and can perform the essential functions of the position, with or without accommodation, HR will inform the hiring official that the position must be held for the employee.

(4) If the employee meets the minimum qualifications for the position identified, the placement should be non-competitive. Thus, there is no interview or ranking process.

(5) If no position is found at the current location, HR will share the employee's resume and job/pay choice with the other facility or facilities identified by the employee. The HR staff at that location or those locations will follow the guidance in (1) to (4) above.

(6) HR will cooperate with any other HR office in VA that asks for a search of suitable positions for an employee who must be reassigned as a disability accommodation. For the purposes of reassignment, all components of VA are considered to be one agency; the employee may request reassignment to any component/facility.

(7) This process will continue until a position is found or 90 (ninety) calendar days expire.

e. Reassignment in the same location will be sought first but if the employee agrees to a broader search, reassignment can be made to positions in VA facilities and Administrations beyond the organization or facility where the requestor was originally employed. Relocation costs will be provided only if indicated in the vacancy announcement or if relocation expenses are normally paid with respect to the position identified.

f. The HR staff should explain to the supervisor for the identified vacancy: "Your vacancy was identified as a suitable position for an employee who needs a reassignment as an accommodation. VA is required to follow U.S. Equal Employment Opportunity Commission (EEOC) guidance in this matter; the EEOC interprets agency obligations under the Rehabilitation Act of 1973, as amended. Therefore, this reassignment is non-competitive. The Staffing Specialist reviewed the job description and compared it to the employee's resume, and he was found to be qualified. If you wish to meet the employee before he comes on board, you may do so, but we need to stress that this is not an interview. It has already been decided that this employee will be reassigned to this position. Please note that an individual's disability status is private information and may not be shared with anyone not having a bona fide, business related need to know. I want to thank you for your support of VA's efforts to comply with legal requirements."

g. Once the OHR of the facility to which the employee will be reassigned has identified an appropriate reassignment, he or she will notify the employee or applicant, in writing. The OHR should also notify the employee's OHR of the job offer.

h. Reassignment must be considered as an accommodation prior to terminating an employee with a disability who cannot be accommodated in his or her current position. In this situation, reassignment should be considered even if not specifically requested.

i. Once the job offer is made, the employee's OHR or LRAC will give the employee a completed VA Form 0857j, Offer of Reassignment.

j. The employee will have fourteen (14) calendar days from his or her receipt of the offer to consider whether to accept the offered reassignment. The identified vacancy must be held open during this time.

k. If the employee is moving to a new location and has VA or CAP issued equipment, that equipment follows the employee to the new location.

l. If other VA employees applied for the slot that will be filled by the reassigned employee, the manager/supervisor at the new location may only tell the unsuccessful candidates that the individual "...was selected in compliance with applicable laws." Under no circumstances should they tell anyone that the individual was placed as a reasonable accommodation, and no mention should be made of the disability.

m. If the requestor has identified a vacant, funded position, the essential functions of which he or she claims he or she can perform, HR must make a sufficient inquiry to determine whether the reassignment proposed by the requestor would effectively accommodate his or her disability, and whether the position is otherwise suitable. If so, the requestor should be offered and placed in the position non-competitively.

n. If HR is unable to identify a suitable position to which the employee can be reassigned, the request will be denied and the employee will be advised as to avenues for redress (Section 19 of this Handbook), using VA Form 0857f.

17. PARKING

a. When there are a limited number of employee parking spaces, employees with mobility impairments or a disability that precludes them from using public transportation have priority over all other groups, per Title 41 CFR § 102-74.305. Additional handicapped (HC) spaces will have to be created if a facility does not have enough HC parking spaces for the number of employees with mobility impairments who requested parking as a reasonable accommodation. Facilities may NOT require employees to arrive early in order to get a space. Assigning each HC space to a specific employee is highly recommended.

b. When an employee requests a space near the building as a reasonable accommodation (and goes through the accommodation process), that employee must be provided an assigned space with the shortest route to their workspace. The Americans with Disabilities Act Accessibility Guidelines specify the size of the space and the access area.

c. Every facility that provides any parking spaces to employees MUST have a standardized method for ensuring that employees with mobility impairments receive the parking spaces that are closest to the building if requested, or spaces large enough for egress. This applies to all VA facilities, including leased facilities.

18. TELEWORK

a. Telework can be an appropriate reasonable accommodation for an employee with a disability. Further, an employee with a disability may also be permitted to telework when other staff members are not. As Federal law, the Rehabilitation Act is superior to any office, facility, or agency policy on telework.

b. When telework is provided as an accommodation, there is more flexibility in the number of days and the frequency of telework. For example, an employee with a disability that does not hinder productivity but does make it difficult to come to the office on a daily basis may be allowed to telework up to five days a week. Alternatively, an employee may have a disability that is aggravated by extreme temperatures or poor air quality and will need a telework agreement permitting telework on days when these situations occur.

c. If an employee is approved for telework and needs the same equipment to work from home, the equipment/assistive technology should be provided. Examples are ergonomic desks, JAWS software, etc. If the employee has the necessary equipment in the office, but will be teleworking full time, the equipment should be moved to the employee's home. When the need for telework ends or the employee leaves VA, the equipment must be returned to the facility.

19. The VA-DoD PARTNERSHIP REGARDING THE COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM (CAP).

a. VA facilities and offices should fully utilize VA's partnership agreement with DoD's CAP, which provides assistive technology free of charge to individuals with disabilities who are Federal employees or participating in the Workforce Recruitment Program. Accommodation requests for assistive technology should be made directly to CAP online by the LRAC or ALRAC after an employee's request is approved. Only the LRAC and ALRAC are authorized to submit requests to CAP.

b. CAP provides assistive technology for Federal employees and Workforce Recruitment Program interns who are blind, have low vision, are deaf, hard of hearing, or have dexterity, communication, cognitive, or learning disabilities, post-traumatic stress disorder (PTSD) and other disabilities.

c. CAP, when necessary, can conduct a needs assessment to identify the most appropriate solutions for an individual requesting a reasonable accommodation when it is unclear what would be most effective. When feasible, CAP will provide the accommodation. CAP covers the cost of installation, integration, and training on assistive technology. Before requesting a needs assessment from CAP, the employee's functional limitations and duties should be discussed with staff at the Job Accommodation Network (JAN) <www.askjan.org>. JAN can often suggest a suitable accommodation.

d. In some cases, CAP staff will have questions, and may even request medical documentation. These inquiries should be addressed as soon as possible. A lack of response

can lead to a denial by CAP. Note that if the LRAC or ALRAC did not submit the request, he or she will not be aware of any follow up questions from CAP.

e. CAP does not provide office furniture, lighting, sign language interpreters, captioning, readers, or other non-IT related accommodations.

f. VA officials should remain aware that the responsibility to accommodate the Department's employees and applicants ultimately rests with VA, not with the CAP Program; the CAP Program is a tool that may be used to fill some accommodation requests. Approved accommodation requests that fall beyond CAP's purview, or are unfulfilled due to lack of CAP funds, must be provided by VA.

g. CAP does not provide assistive technology for interns (except Workforce Recruitment Program interns), volunteers, or contractors.

h. CAP does not provide assistive technology needed to train or instruct Veterans or their family members who are not VA employees or applicants, except for wounded service members. Requests for those types of training tools should be made through the normal procurement process and do not constitute a reasonable accommodation.

20. VA REASONABLE ACCOMMODATIONS CENTRALIZED FUND.

a. Managers, supervisors, LRACs and ALRACs should be aware that VA's ODI will reimburse the cost of accommodations not provided by CAP. Examples are readers for blind applicants and employees, and sign language interpreters, oral interpreters, or Computer-Assisted Real Time (CART) Captioning for applicants and employees with hearing loss. Please bear in mind that EEOC has ruled that agencies need to provide interpreters or other accommodations for deaf or hard of hearing employees to attend staff meetings, training, safety talks, discussions on work procedures or assignments, and disciplinary actions, even when the employee does not make a request.

b. ODI does not reimburse the cost of facility modifications, which should be requested from the Engineering Service at the specific VA location. In some cases, providing an accommodation can require making facility modifications that go beyond current building code.

c. Reimbursement is provided on a first-come, first-served basis, so submit requests to ODI as soon as possible. It is not advisable to wait until the end of the fiscal year because the funds may not be available at that point.

d. If an accommodation (other than services) will cost over \$500 and is going to be submitted for reimbursement, consult with the NRAC before purchase. If the NRAC approves the purchase, the confirming email should be submitted with the request for reimbursement.

e. Facilities shall endeavor to obtain sign language interpreters and other services from local sources. ODI will not reimburse travel costs for interpreters and other service providers. Freelance interpreters are recommended if the employee is satisfied with their services.

f. To request reimbursement from the Centralized Fund, follow the instructions on the website: <<http://www.diversity.va.gov/programs/pwd.aspx#fund>>

21. DENIAL OF REASONABLE ACCOMMODATION REQUESTS.

a. After consultation with the NRAC or Regional OGC, the DMO may deny the request for accommodation for the following reasons:

(1) **Undue Hardship.** A determination of undue hardship means that VA finds that a specific accommodation would be significantly difficult to provide, or would fundamentally alter the nature of the operations of the affected VA organization, as defined earlier. Before reaching this determination, the DMO, in consultation with the LRAC, must explore whether other effective accommodations are available and can be provided.

(Note: In determining whether an accommodation poses an undue hardship, the financial resources of the organization or the Department as a whole should be considered, not just the resources of the individual facility or staff office. Thus, only the Secretary, VA, can deny a request based on cost, and facilities can invoke undue hardship only for impact on operations.)

(2) **Insufficient Medical Documentation.** The employee or applicant, when requested, did not provide sufficient medical documentation to establish a covered disability or a need for reasonable accommodation. Medical documentation should not be requested when the disability is obvious or the employee has already submitted documentation to VA in the past for the same functional limitation.

If medical documentation is received from an appropriate health care provider individual or entity, states the disability and nature of the impairment (the expected/likely duration, its severity, and one or more activities it limits including the extent/degree to which they are limited) and either the reason the individual requires accommodation or how the accommodation will assist the individual, it is VA's policy to not request additional medical documentation. Instead, the facility or office must move to the decision process. Additional documentation can be requested only if the medical provider did not answer the questions on VA Form 0857e, and/or the employee is unwilling to ask the medical provider to answer the questions.

(3) **Removes Essential Function(s).** The requested accommodation would require the removal of an essential function from the position occupied by the employee or from the position for which the applicant applied. See section 2 (d) for the definition of essential functions.

(4) **Lowers Standards.** The requested accommodation would require lowering a performance or production standard that is required of all employees in similar positions (job series/grade level). To invoke this as the reason for denial, the performance or production standard must exist prior to the time of the request.

(5) **Direct Threat.** The individual poses a “direct threat” to the health and safety of himself or herself or others. To meet this factor, there must be a high probability of substantial harm that cannot be eliminated or reduced by providing an accommodation. In those instances, the DMO must consider the limitations of the individual, specifically, the risk posed by the impairment or functional limitation, the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will actually occur, and imminence of the potential harm. Per EEOC guidance, direct threat determinations, as with all decisions related to reasonable accommodation, are made on a case by case basis; the decision may not be based on generalizations or assumptions. A health care professional, facility safety officer, or RC may be consulted for assistance.

b. The DMO may NOT deny the request for accommodation for the following reasons:

(1) A bias against the employee or the accommodation process.

(2) The facility cannot fund the cost of the accommodation. The funding is the responsibility of VA as a whole. Thus only the Secretary, VA may deny an accommodation based upon cost.

(3) The requested accommodation is/requires a change or exception to an office or facility policy. There will be situations when an accommodation will mean a departure from routine practices or procedures. For example, if work duties can be performed off site, but the office has a practice of not allowing telework, an employee who finds the commute to be too challenging may be allowed to telework. In the same vein, a parking space near the building should be granted when requested by an employee who has a mobility impairment. The Rehabilitation Act of 1973 supersedes a facility’s parking, telework and other policies if the policy, in its application, denies an individual with a disability reasonable access to the workplace.

(4) Based upon the fact that non-disabled employees are not granted the same privilege. People who do not have a disability are not a protected class, and there is no reason to compare the two groups.

c. **Denial of a request from an employee.** If the DMO cannot grant a requested accommodation, he or she must complete VA Form 0857f, Accommodation Request Determination, explaining in detail why the request was denied. The DMO must then share the VA 0857f with the NRAC in ODI, the RC in the facility's geographic area or, if the requestor is employed by OIG, the DMO may consult with the Counselor to the Inspector General. The aforementioned offices will only serve as consultants and concurrence is not required. Once a final determination is made, the DMO must notify the employee of the denial in writing, using the VA 0857f, which provides details on the specific reason for the denial and informs the employee of possible avenues of redress.

d. **Denial of a request from an applicant.** If the HRMO cannot grant a request for accommodation, the HRMO must consult with the NRAC or the Office of General/Regional Counsel in the facility's geographic area. If the requestor is an applicant for a position in OIG,

the DMO may consult with the Counselor to the Inspector General. All denials will be communicated via a completed VA Form 0857f, Accommodation Request Determination (Appendix B). The aforementioned offices will only serve as consultants and concurrence is not required. Denial of a request from an applicant should be very rare. The HRMO should notify the applicant in writing of the denial within ten (10) calendar days of the initial request and inform the applicant of possible avenues of redress.

22. AVENUES FOR REDRESS OF DENIALS.

a. If an employee or applicant believes that he or she has been denied a reasonable accommodation, he or she has the following options:

(1) **Reconsideration.** Upon receipt of the decision from the DMO, the employee or applicant has seven (7) calendar days to request reconsideration. After receiving a request for reconsideration, a senior official above the DMO has fourteen (14) calendar days to render a decision and notify the requestor, in writing. A final interactive process with the LRAC or ALRAC, the employee, and the senior official is recommended, to ensure that any concerns are heard before a final decision is made. The Form VA 0857f can be used to document the decision; a copy should be given to the employee.

(2) **EEO Complaint.** To file an EEO complaint, applicants for employment or employees must contact an EEO counselor within forty-five (45) calendar days of receiving the decision, pursuant to 29 C.F.R. Part 1614. Contact your local Office of Resolution Management for further information.

(3) **Union Grievance.** Bargaining unit employees may file a grievance in accordance with applicable Collective Bargaining Agreements. The union's negotiated grievance procedure will apply. Contact your local union representative for further information.

(4) **Administrative Grievance.** This is a procedure used by non-bargaining unit employees who may file an Administrative Grievance to challenge the decision within fifteen (15) calendar days of receiving the decision by contacting anyone in their chain of command. The employee should also inform Human Resources that they are filing an Administrative Grievance. Contact your local Human Resources Office for further information.

(5) **Alternative Dispute Resolution (ADR).** Employees and applicants are encouraged to participate in informal resolution processes available to address the reasonable accommodation outcome. The ADR process is outlined in VA Directive 5978: Alternative Dispute Resolution. Individuals may participate in ADR as part of the above avenues of redress or independently. If participation is independent of the above avenues of redress, it does not meet the requirements for filing claims under the aforementioned processes. If the employee believes she or he may also want to pursue other avenues of redress, the employee should check with the appropriate EEO/Union/HR office to ensure that time requirements are met. Find your local ADR Coordinator at: http://www1.va.gov/adr/docs/ADR_Coordinators_List.pdf and contact them for further information.

23. ADMINISTRATIVE CLOSURE.

Under certain circumstances, a request may be administratively closed, using line 10 on VA Form 0857d. When the employee does not respond to emails and phone calls for thirty (30) calendar days, creating the impression that s/he has abandoned the process, the request can be closed. At any later date, when the employee expresses an interest in resuming the process, the request can be re-opened and the time frame begins again.

24. INFORMATION TRACKING AND REPORTING.

a. LRACs shall be responsible for retaining records related to a particular individual who has requested a reasonable accommodation for the duration of that individual's employment in the Department. These records include any documentation of the individual's disability or need for reasonable accommodation, as well as information about the disposition of that individual's accommodation request. These records must be kept separate from the individual's personnel file. If an individual transfers to another organization in VA, the records should go to the LRAC in the new organization. Three years after the individual separates from VA, the medical documentation and other information regarding the individual accommodation request should be destroyed, as instructed by the General Records Schedule.

b. LRACs shall be responsible for tracking all reasonable accommodation requests via RACS and utilizing applicable forms contained in this Handbook.

c. Cumulative information will be retained for at least three years in order to track VA performance and assess whether accommodation requests are being processed adequately.

25. REFERENCES

- a. Rehabilitation Act of 1973, as amended.
- b. Title 1 of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008 (ADAAA).
- c. EEOC guidance on the ADAAA.
- d. Executive Order 13548
- e. OPM's Model Strategies for Recruitment and Hiring of People with Disabilities as Required Under Executive Order 13548.
- f. Collective bargaining agreements, as appropriate.
- g. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act

- h. EEOC Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended (29 CFR 1630 Appendix)
- i. Executive Order 13164, Requiring Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation
- j. EEOC Policy Guidance on Executive Order 13164
- k. Human Resources Information Letter 05-12-02, Employment of Persons with Disabilities.
- l. The Memorandum for Under Secretaries, Assistant Secretaries, Other Key Officials and Facility Directors on the Americans with Disabilities Amendments Act of 2008, February, 23, 2009.
- m. Privacy Act of 1974 (Public Law 93-597).
- n. Title 29 Code of Federal Regulations (CFR), Sections 1611, 1614, and 1630.
- o. Title 29 United States Code (U.S.C.), Sections 791, 792, and 793.
- p. VA Directive 5978: Alternative Dispute Resolution

26. ADDITIONAL RESOURCES.

- a. **U.S. Equal Employment Opportunity Commission** at <http://www.eeoc.gov/federal/directives/index.cfm> provides resource information and policy guidance for processing reasonable accommodation requests and frequently asked questions.
- b. **Job Accommodation Network (JAN)** at <http://askjan.org> is funded by the U.S. Department of Labor's Office of Disability Employment (ODEP) Policy and provides information on the Americans with Disabilities Act (ADA) and a wide range of reasonable accommodations options for many different types of disabilities.
- c. **VA's Section 508 Program Office** at <http://vaww.section508.va.gov/> is responsible for ensuring that VA's Electronic Data Systems and websites are accessible to individuals with disabilities under the authority of Section 508 of the Rehabilitation Act of 1973.
- d. **VHA, Office of Health Information, Health Data and Informatics.** Section 508 Office (19F) also provides section 508 consulting services for VHA organizations that need assistance. Web site: <http://vaww.vista.med.va.gov/508workgroup/>
- e. **VA's ODI web site** for the People with Disabilities Program provides additional information regarding VA's reasonable accommodation procedures. Web site: <http://www.diversity.va.gov/programs/pwd.aspx>

Major Life Activities:

Activities such as caring for one's self, performing activities of daily living, performing manual tasks, walking, seeing, standing, sitting, reaching, lifting, bending, speaking, hearing, breathing, learning, concentrating, thinking, interacting with others, and working. Also included are the operations of major bodily functions, including, but not limited to: functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

FORMS:

VA Form 0857a, Written Confirmation of Request for Accommodation
<http://www.diversity.va.gov/programs/files/pwd/VA0857a.pdf>

VA Form 0857b, Acknowledgement of Receipt of Request
<http://www.diversity.va.gov/programs/files/pwd/VA0857b.pdf>

VA Form 0857c, Approval of Interim Accommodation
<http://www.diversity.va.gov/programs/files/pwd/VA0857c.pdf>

VA Form 0857d, Administrative Closure of Accommodation Request
<http://www.diversity.va.gov/programs/files/pwd/VA0857d.pdf>

VA Form 0857e, Request for Medical Documentation
<http://www.diversity.va.gov/programs/files/pwd/VA0857e.pdf>

VA Form 0857f, Accommodation Request Determination
<http://www.diversity.va.gov/programs/files/pwd/VA0857f.pdf>

VA Form 0857g, Denial of Accommodation Request
<http://www.diversity.va.gov/programs/files/pwd/VA0857g.pdf>

VA Form 0857h, Employee Limitations on Reassignment Options
<http://www.diversity.va.gov/programs/files/pwd/VA0857h.pdf>

VA Form 0857i, Centralized Accommodation Fund Application
<http://www.diversity.va.gov/programs/files/pwd/VA0857i.pdf>

VA Form 0857j, Offer of Reassignment
<http://www.diversity.va.gov/programs/files/pwd/VA0857j.pdf>

VA Form 0857k, Authorization for Limited Release of Medical Information
<http://www.diversity.va.gov/programs/files/pwd/VA0857k.pdf>

Timeframes for Processing Reasonable Accommodation Request(s) The entire reasonable accommodation process must be completed as soon as possible, but within 30 calendar days. The timeframes below are suggested guidelines.	
Day 0 Initial Request	An employee, an applicant for employment, or an individual acting on behalf of the employee or applicant, requests an accommodation, either orally or in writing
Within 5 calendar days of receiving initial request	The individual who received the request sends the employee VA Form 0857A "Confirmation of Reasonable Accommodation" and explains that completion is voluntary but would be appreciated. The DMO responds to the employee or applicant in writing using VA Form 0857b, "Acknowledgement of Receipt of Request" and provides a copy of that response to the LRAC. The DMO or supervisor begins the interactive process with the employee or applicant.
Within 10 calendar days of receiving initial request	<p>If the employee's disability is not obvious, or VA has no documentation, the DMO decides if medical information is needed; if so, the LRAC will request and facilitate collection of medical information. Note: Timeframes freeze from the time that medical documentation is requested to the time that it is received.</p> <p>For Applicants: The HRMO should make every effort to process requests from applicants as soon as possible in order for them to be able to participate in the application process. The HRMO should notify the applicant in writing of the denial within <u>ten</u> calendar days of the initial request and inform the applicant of possible avenues of redress (see Form VA 0857f). If the disability is not obvious or VA has no documentation, and the applicant does not provide a certification letter, HRMO will request medical documentation. If the applicant fails to produce required medical documentation, VA is not required to provide accommodation.</p>
Within 13 calendar days of receiving initial request	<p>When medical documentation is not requested (i.e., the disability is obvious or VA has documentation), the DMO determines whether the individual is a Qualified Individual with a Disability, in consultation with the LRAC.</p> <p>Where sufficient medical documentation is received, a determination will be made on whether the individual is a Qualified Individual with a Disability. If the documentation is not sufficient, the DMO or the LRAC may request additional medical documentation from the requestor. Again, timeframes freeze until the additional medical documentation is provided. If an interim workplace adjustment is possible, it should be made.</p>
Within 27 calendar days of receiving initial request	The DMO decides whether accommodation will be granted. When approving a request, use Form VA 0857f "Accommodation Request Determination." If the decision is to deny the request, the DMO will consult with General/Regional Counsel or ODI, prior to issuing denial of the request. If accommodation is denied, inform requestor, in writing, of denial and his or her right to request reconsideration, using VA Form 0857f. Provide a copy to the LRAC.
Within 30 calendar days of receiving initial request	Provide accommodation or, in extenuating circumstance, an interim workplace adjustment.